

Joint Petitioners' Hearing Brief
SC P.S.C. Docket No. 2005-57-C
July 27th, 2006

ATTACHMENT 17

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 REBUTTAL TESTIMONY OF CARLOS MORILLO
3 BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 18409-U
5

6 DECEMBER 10, 2004
7

8 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
9 TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR BUSINESS
10 ADDRESS.

11
12 A. My name is Carlos Morillo. I am employed by BellSouth as Director – Policy
13 Implementation for the nine-state BellSouth region. My business address is 675
14 West Peachtree Street, Atlanta, Georgia 30375.
15

16 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
17 AND EXPERIENCE.

18
19 A. I graduated from West Virginia University in 1984 with Bachelor of Science
20 degrees in Economics & Geology. In 1986, I received a Masters in Business
21 Administration with concentrations in Economics and Finance from West
22 Virginia University. After graduation, I began employment with Andersen
23 Consulting supporting various projects for market research, insurance, and
24 hospital holding companies. In 1990, I joined MCI, Inc. as a Business Analyst.
25 My responsibilities included supporting the implementation of processes and

1 given month if special circumstances warrant, a CLEC may request an extension
2 of the due date and BellSouth does not unreasonably refuse to grant such a
3 request.

4
5 Q. ALSO AT PAGE 104, THE PETITIONERS ALLEGE THAT BELL SOUTH IS
6 "CONSISTENTLY UNTIMELY IN POSTING OR DELIVERING ITS BILLS"
7 AND THAT THERE ARE CIRCUMSTANCES WHEN BELL SOUTH'S
8 INVOICES ARE "INCOMPLETE AND/OR INCOMPREHENSIBLE." PLEASE
9 COMMENT.

10
11 A. Regarding the allegation of untimely bills, from the time the electronic bill goes
12 out (generally 4-6 days after 'bill period'), the CLEC generally has 22 days to
13 review and pay its bill. For example, if the bill day is the first of the month, the
14 billing systems normally pull the data 3-4 days later (say on the 5th). It takes
15 approximately 24 hours for the billing systems to run, sometime after which an
16 electronic feed can be sent. Paper bills will take longer and it is up to the CLEC as
17 to how it wishes to receive its bill.

18
19 The due date is generally 30 days after the bill period. Therefore, the CLEC has
20 approximately three weeks to pay its bill after receipt of the bill electronically.
21 Regarding the allegation of "incomplete and/or incomprehensible" bills, the
22 CLECs do not support this allegation with examples or other factual evidence. If
23 the CLECs would provide such evidence, BellSouth will be glad to investigate.
24 Further, if the CLECs believe that they have insufficient time to review their bill
25 or that BellSouth's bills are "incomprehensible," then they should dedicate

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ATTACHMENT 18

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Petition of the CLEC)
Coalition for Arbitration against)
Southwestern Bell Telephone, L.P. d/b/a) Docket No. 05-BTKT-365-ARB
SBC Kansas under Section 252(b) of the)
Telecommunications Act of 1996.)

In the Matter of the Application of AT&T)
Communications of the Southwest, Inc.)
and TCG Kansas City, Inc. for Compulsory) Docket No. 05-AT&T-366-ARB
Arbitration of Unresolved Issues with SBC)
Kansas Pursuant to Section 252(b) of the)
Telecommunications Act of 1996.)

In the Matter of the Request of the CLEC)
Joint Petitioners for Arbitration with South-)
western Bell Telephone L.P. d/b/a SBC)
Kansas for an interconnection Agreement) Docket No. 05-TPCT-369-ARB
that Complies with Section 251 and 271)
of the Federal Telecommunications Act)
of 1996.)

In the Matter of the Petition of Navigator)
Telecommunications, LLC for Arbitration)
against Southwestern Bell Telephone, L.P.) Docket No. 05-NVTT-370-ARB
d/b/a SBC Kansas Pursuant to Section)
252(b)(1) of the Telecommunications Act)
of 1996.)

Arbitrator's Determination of Issues

The above matter comes before Arbitrator Robert L. Lehr, appointed by The State Corporation Commission of the State of Kansas (Commission) for consideration and recommendation. Being duly advised in the premises and familiar with all matters of record, the Arbitrator finds and concludes as follows.

damages not addressed by the Performance Measures, the CLEC Coalition suggests that determination of this damage issue be deferred until Phase 2 of these proceedings.³⁰

27. The Joint Petitioners are a bit more aggressive, seeking three times the average monthly amount billed by SWBT to a CLEC when a customer provides the CLEC in excess of \$5,000 in monthly billings when that customer is out-of-service for four hours or more due to the actions or omissions of SWBT.³¹

28. SWBT believes the CLECs are amply protected by indemnification provisions, liquidated damages under the performance measurements and remedies available under the dispute resolution process. SWBT contends that, if it should be subject to the CLECs' proposed damage provisions, its rates would need to be re-examined in light of this new, significant exposure to damages.³²

Determination.

29. There is no evidence in the record to support the CLECs need for availability for increased damage amounts for sub-standard performance by SWBT. The Arbitrator, therefore, adopts the language of SWBT.

General Terms and Conditions--receipt of bills

CLEC Coalition GTC-15 (a & b); Joint Petitioners GTC-6 (a & b)

30. The CLEC Coalition complains that the bills from SWBT are customarily received 10 to 15 days after the bill date. Xspedius, for example, receives its bills,

³⁰ CLEC Coalition Post-Hearing Brief p. 42.

³¹ Joint Petitioners GTC DPL § 7.1.6 p. 11.

³² SWBT Pellerin Direct p. 3 line 6 - p. 6 line 13.

on the average, 16 days after bill date³³ while Birch, over a two-year period, received electronic invoices on an average of seven to nine days after the bill date and received paper invoices on an average of seven to 13 days after the bill date. SWBT demands payment within 30 days of the bill date.³⁴ Typically, it takes 30 days to audit a bill from SWBT.³⁵ The due date is critical because escrow, deposit requirements and determinations of breach are tied to the due date. Although the CLEC Coalition originally proposed a bill due date of 45 days from the receipt of the bill, it is willing to compromise as long as it has 30 days to review the bills for errors.³⁶

31. The Joint Petitioners have experienced similar instances of bills arriving ten days after bill date, which does not provide the CLEC sufficient time to review its bill. The Joint Petitioners propose a due date of 35 days after receipt of the bill from SWBT.³⁷

32. SWBT believes that if the CLECs have 30 days to review their bill that is sufficient time to audit their bills.³⁸

Determination.

33. The problem for the CLECs is that they never have 30 days from the bill date in which to audit their bills. SWBT has a commitment to "get the bills out within 6 work days" after the bill date.³⁹ The Arbitrator finds that the CLECs require more time to audit their bills from SWBT than what is afforded them under the current billing procedure.

³³ CLEC Coalition Joint Direct p. 33 line 21 - p. 34 line 12.

³⁴ Birch Wallace Direct p. 9 line 1 - 9.

³⁵ Tr. Vol. 1 p. 121 line 14 - 24.

³⁶ CLEC Coalition Joint Direct p. 35 line 23 - 25.

³⁷ Joint Petitioners Schmick Direct p. 5 line 20 - p. 6 line 22.

³⁸ SWBT Quate Tr. Vol. 1 p. 126 line 23 - 25.

³⁹ SWBT Read Tr. Vol. 1 p. 142 line 3 - 5.

However, pegging a bill due date based upon receipt of the bill is not dependable and is fraught with possible disputes. The Arbitrator, therefore, concludes that CLECs shall have 45 days after the bill date by which time payment must be received by SWBT.

General Terms and Conditions--invoice medium

Joint Petitioners GTC-7

34. The Joint Petitioners want all invoices in electronic form as well as in paper form, dependent upon CLEC request, because electronic versions are physically more manageable than boxes of paper.⁴⁰

35. SWBT advises that most, but not all, of its bills can be received in electronic form, with paper copies available upon request.⁴¹

Determination.

36. There appears to be little value of requiring SWBT to produce bills in electronic versions when they are, for the most part, already available, and paper copies are available upon request. The Arbitrator adopts SWBT's position.

General Terms and Conditions--billing dispute form

Joint Petitioners GTC-8(a)

37. The Joint Petitioners report that SWBT requires CLECs to use a prescribed form when submitting billing disputes. The form requires, among other things, an account identifier, bill date and end user account information. Although the Joint Petitions admit that, in many cases, there are no problems in following SWBT's procedure, they do not believe the forms are that useful in all situations. For example, if SWBT incorrectly bills each telephone line on a CLEC's account for several months,

⁴⁰ Joint Petitioners Schmick Direct p. 8 line 16 - p. 9 line 13.

⁴¹ SWBT Quate Direct p. 25 lines 7 - 21.

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July 27th, 2006

ATTACHMENT 19

BELLSOUTH TELECOMMUNICATIONS, INC.
SUPPLEMENTAL DIRECT TESTIMONY OF CARLOS MORILLO
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NOS. P-772, SUB 8; P-913, SUB 5;
P-989, SUB 3; P-824, SUB 6; P-1202, SUB 4

NOVEMBER 12, 2004

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR BUSINESS
ADDRESS.

A. My name is Carlos Morillo. I am employed by BellSouth as Director – Policy
Implementation for the nine-state BellSouth region. My business address is 675
West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
AND EXPERIENCE.

A. I graduated from West Virginia University in 1984 with Bachelor of Science
degrees in Economics & Geology. In 1986, I received a Masters in Business
Administration with concentrations in Economics and Finance from West
Virginia University. After graduation, I began employment with Andersen
Consulting supporting various projects for market research, insurance, and
hospital holding companies. In 1990, I joined MCI, Inc. as a Business Analyst.

1 days of determining that the customer's creditworthiness indicates a deposit is no
2 longer necessary.
3

4 *Item 102; Issue 7-8: Should the amount of the deposit BellSouth requires from the*
5 *CLEC be reduced by past due amounts owed by BellSouth to the CLEC? (Attachment*
6 *7, Section 1.8.3.1)*
7

8 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?
9

10 A. No, a CLP's deposit should not be reduced by past due amounts owed by
11 BellSouth to the CLP. The CLP's remedy for addressing non-disputed late
12 payment by BellSouth should be suspension/termination of service or assessment
13 of interest/late payment charges similar to BellSouth's remedy for addressing late
14 payment by the CLP. KMC has already pursued one of these options with
15 BellSouth – they can bill BellSouth for late payment charges today.
16

17 ~~BellSouth is within its rights to protect itself against uncollectible debts on a non-~~
18 discriminatory basis. BellSouth *must* protect against unnecessary risk while
19 providing service to all requesting CLP providers. The Petitioners are not faced
20 with the same obligation.
21

22 Q. AT PAGE 126, THE PETITIONERS STATE THAT THEY HAVE CONCEDED
23 TO GIVE UP THE RIGHT TO RECIPROCAL DEPOSITS. HOWEVER, IF
24 THEY DO NOT COLLECT DEPOSITS, PETITIONERS SAY THEY SHOULD
25 "AT LEAST HAVE THE ABILITY TO REDUCE THE AMOUNT OF

1 SECURITY DUE TO BELLSouth BY THE AMOUNTS BELLSouth
2 OWES." PLEASE RESPOND.
3

4 A. The Petitioners' proposal is administratively unmanageable and overly simplistic.
5 The Petitioners' provide no explanation as to how it could be accomplished.
6 Security deposits are established due to a risk of non-payment, not a risk of slow-
7 payment. Deposit amounts relate directly to the risk of default. BellSouth has
8 never defaulted on its payments. Because BellSouth is not buying UNEs and other
9 services from CLPs, there is no reciprocal need for BellSouth to pay a deposit.
10 The problem the Petitioners seek to resolve is not a default issue for which a
11 deposit would be required; it is a slow payment issue. Slow payment should be
12 treated through suspension/termination of service or the application of late
13 payment charges as noted above.
14

15 Q. THE PETITIONERS, AT PAGE 126, STATE THAT BELLSouth DOES NOT
16 HAVE A GOOD PAYMENT RECORD; THUS, REDUCED DEPOSIT
17 AMOUNTS IS A REASONABLE MEANS TO PROTECT THE
18 PETITIONERS' FINANCIAL INTERESTS. PLEASE RESPOND.
19

20 A. In the past 12 months, BellSouth has paid or disputed 91% of the invoices
21 received from Xspedius Communications and Xspedius Corporation within 30
22 days of receipt of these invoices. Since December 2003, BellSouth has paid or
23 disputed 97% of the invoices received from NuVox within 30 days of receipt of
24 these invoices. In the past 12 months, BellSouth has paid or disputed 38% of the
25 invoices received from KMC within 30 days of receipt of these invoices. There

1 have been numerous delays by KMC in providing their invoices to BellSouth
2 causing delays in payments and additional work effort to verify and pay these
3 invoices. Both companies have been working together to resolve these delays and
4 progress is being made on the receipt and payment of future invoices. BellSouth
5 has not received invoices from NewSouth since March 2001 due to bill and keep
6 clauses in their interconnection agreement with BellSouth.

7
8 *Item 103; Issue 7-9: Should BellSouth be entitled to terminate service to CLEC*
9 *pursuant to the process for termination due to non-payment if CLEC refuses to remit*
10 *any deposit required by BellSouth within 30 calendar days? (Attachment 7, Section*
11 *1.8.6)*

12
13 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

14
15 A. Yes, BellSouth should be permitted to terminate service to a CLP if the CLP
16 refuses to remit any deposit required by BellSouth within 30 calendar days. Thirty
17 calendar days is a reasonable time period within which a CLP should meet its
18 fiscal responsibilities.

19
20 Q. PLEASE EXPLAIN BELL SOUTH'S POSITION.

21
22 A. The purpose of the deposit is to help mitigate BellSouth's risk as it provides
23 services worth millions of dollars every month to CLPs. BellSouth has incurred
24 losses on several occasions over the past few years where a CLP, for one reason
25 or another, did not or was unable to pay its bills. CLPs are valued customers;

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ATTACHMENT 20

Docket No. 16583-U

In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with
BellSouth Telecommunications, Inc. Pursuant to the Telecommunications
Act of 1996.

ORDER

BY THE COMMISSION:

On February 7, 2003, ITC^DeltaCom Communications, Inc. ("DeltaCom") petitioned the Georgia Public Service Commission ("Commission") to arbitrate certain unresolved issues in the interconnection negotiations between DeltaCom and BellSouth Telecommunications, Inc. ("BellSouth").

I. JURISDICTION AND PROCEEDINGS

Under the Federal Telecommunications Act of 1996 (the Federal Act), State Commissions are authorized to decide the issues presented in a petition for arbitration of interconnection agreements. In addition to its jurisdiction of this matter pursuant to Sections 251 and 252 of the Federal Act, the Commission also has general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995 (Georgia Act), O.C.G.A. §§ 46-5-160 *et seq.*, and generally O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21 and 46-2-23.

The Commission approved an interconnection agreement between the parties which was in effect from May 31, 2001 until December 31, 2002. On April 22, 2003, the Commission assigned the matter to a Hearing Officer for scheduling. On May 19, 2003, the Hearing Officer issued an order scheduling direct and responsive testimony, discovery and hearings in this matter. Hearings were held before the Commission on July 9 and 10, 2003. On September 12, 2003, the parties filed briefs on the unresolved issues.

The Commission has before it the testimony, evidence, arguments of counsel and all appropriate matters of record enabling it to reach its decision.

II. FINDINGS AND CONCLUSIONS

The differences between DeltaCom's proposal in its brief and BellSouth's proposal do not seem substantial. Essentially, they both provide for notice in advance of any change being adopted, and an opportunity for the CLEC to object to the change. The Commission finds that the current system works efficiently and adequately protects the interests of CLECs.

Issue 58(b)

Should BellSouth be required to post rates that impact UNE services on its website?

Issue 58(b) concerns whether BellSouth must post rates that impact UNE services on its website. The concern is whether without proper notice of a rate change DeltaCom would experience disruption. This request is unnecessary because Commission orders are posted on its website.

Issue 59

Should the payment due date begin when BellSouth issues the bill or when DeltaCom receives the bill? How many days should DeltaCom have to pay the bill?

The issue in dispute is what triggers the beginning of the thirty day period that DeltaCom has to pay its bills to BellSouth. Currently, the clock starts running the date that the bill is prepared. (Tr. 105). DeltaCom proposes that the due date of a bill be thirty days from the receipt of the bill. (DeltaCom Brief, p. 40). Apparently, it is not just a matter of paying the bills as they arrive. DeltaCom explains that it needs sufficient time to analyze the 1,700 invoices in order to ensure their accuracy. *Id.* at 41. While the percentage of BellSouth's bills to DeltaCom electronically is in the high nineties, DeltaCom asserts that there is still a delay between the date the bill is prepared and the date DeltaCom receives the bill. (Tr. 105). BellSouth claims that the changes to its billing system would be costly and unnecessary. First, BellSouth argues that DeltaCom does not want to pay for the associated costs. (BellSouth Brief, p. 44). Second, BellSouth relies upon DeltaCom's good payment history to argue that change is not necessary. *Id.* BellSouth also claims that it takes a few days to "groom" a bill to track a CLEC's usage for the month. (Tr. 635).

DeltaCom's bills shall be due 30 days after the date the bill is sent out by BellSouth. Given that DeltaCom currently receives in the high nineties percentile of its bills electronically, it has the opportunity then to review the vast majority of its bills for errors from the same date the bill is sent out. The additional few days it takes to receive the remaining bills should not slow up its review process. The time it takes BellSouth to render the bill is out of DeltaCom's control and should not infringe upon DeltaCom's time to review invoices. That DeltaCom has a history of paying its bills in a timely fashion should not be held against it.

Issue 60(a)

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

In re:)	
Petition for Arbitration of)	
ITC^DeltaCom Communications, Inc.)	
with BellSouth Telecommunications, Inc.)	Docket No. 28841
Pursuant to the Telecommunications)	
Act of 1996)	

ARBITRATION PANEL RECOMMENDATIONS

INTRODUCTION

This arbitration proceeding is pending before the Alabama Public Service Commission ("Commission") pursuant to Section 252(b) of the Telecommunications Act of 1996 (the "Act").¹ On January 24, 2003, ITC^DeltaCom Communications, Inc., d/b/a ITC^DeltaCom and d/b/a Grapevine (hereinafter "DeltaCom") filed a Petition for Mediation in Docket No. 28828. BellSouth filed its response to DeltaCom's request for mediation on January 31, 2003. The Commission appointed Ms. Judy McLean, Director of the Commission's Advisory Division as mediator. The parties met on February 6 and 20 of 2003, and mediated and resolved several issues.²

DeltaCom filed a Verified Petition for Arbitration of an Interconnection Agreement with BellSouth Telecommunications Inc., (hereinafter "BellSouth") pursuant to Section 252(b) of the Telecommunications Act of 1996 on February 7, 2003 (hereinafter referred to as the "Petition.") BellSouth filed its Answer on May 6, 2003

¹ The Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 codified at 47 U.S.C. § 151 et seq.

² Issues that were resolved in mediation included Issues 5, 7, 61, 65 and 69.

ISSUE 59: PAYMENT DUE DATE

Should the payment due date begin when BellSouth issues the bill or when DeltaCom receives the bill? How many days should DeltaCom have to pay the bill?

Position of DeltaCom

DeltaCom seeks a payment due date of thirty days from receipt of a bill.

DeltaCom receives approximately 1,700 invoices from BellSouth every month, 94% to 97% of which are transmitted electronically. (T-259, 262-265, 1836). Through this electronic billing, BellSouth is aware of when DeltaCom receives its bills. BellSouth provides a 30-day payment period, but it runs from the time the bill is generated within BellSouth – the “bill date.” Both parties acknowledged, however, that even with electronically transmitted invoices, the actual date the bill is rendered to DeltaCom is a different date than the “bill date,” sometimes not until several days later. (T-1836).

BellSouth argues that DeltaCom’s proposal is “unnecessary” because “DeltaCom receives over 94% of its bills from BellSouth electronically.” BellSouth Brief, p. 69. BellSouth further incorrectly states that electronic billing “obviously results in DeltaCom having even more time between the date they receive the bill and the payment due date.”

Id. It is precisely *because* most bills are provided electronically that a 30-day payment period from receipt is appropriate. The obvious pretense of BellSouth’s argument is that DeltaCom receives an electronic bill quickly and has a full 30 days to pay it – thus the language sought by DeltaCom is “unnecessary.” As admitted by both parties at the hearing, however, this is patently false because the actual date the bill is transmitted is

not the same as the "bill date," the date the bill is generated and the date on which the payment clock begins. Due to the prevalence of electronic billing, it is now quite easy to determine a date that is 30 days from the receipt of the invoice.

In support of their argument, DeltaCom asserts that reviewing BellSouth's bills consumes significant time and resources. BellSouth admitted that the 1,700 invoices sent to DeltaCom every month are extremely voluminous. (T-1837). Further, DeltaCom has approximately 4,000 current billing disputes with BellSouth, perhaps evidencing a high number of errors. (T-259). BellSouth's position that DeltaCom should meet the "due date," which is the next "bill date" (again, the time the bill is generated within BellSouth), regardless of when DeltaCom actually receives the bill, is unfair and unworkable on its face. At a minimum, a 30-day period from receipt is appropriate with regard to electronic invoicing because the due date will be easily and readily known by both parties.

Position of BellSouth

BellSouth maintains that the payment should be due by the next bill date.

BellSouth explained that it invoices DeltaCom every 30 days, and based on that bill date, DeltaCom knows exactly what date the payment is due for each of those invoices. BellSouth stated in its Post-Hearing Brief that its billing systems are programmed around that bill date and BellSouth's anticipated cash flows are based on receiving payments on particular days of the month. BellSouth argues that DeltaCom now seeks to change this

system and does not want to pay for any costs associated with making this type of massive regional billing system modification. Aside from involving a dramatic change to complex billing systems, BellSouth asserts that DeltaCom's request is unnecessary. BellSouth notes that through DeltaCom's own testimony, DeltaCom admitted to having "years of timely payment to BellSouth for wholesale services." Thus, BellSouth argues, if BellSouth's bill payment terms were onerous, as DeltaCom implies, it is doubtful that DeltaCom would have the good payment history that it touts.

In addition, BellSouth contends that its long-standing billing practice in no way limits DeltaCom's ability to review and dispute invoices received from BellSouth, as DeltaCom can dispute invoices long after the payment due date and, in fact, DeltaCom has filed such disputes. BellSouth states that, to the extent DeltaCom has questions about its bills, BellSouth cooperates with DeltaCom to provide responses in a prompt manner and resolve any issue. Furthermore, BellSouth points out that DeltaCom acknowledges that it receives 95% of its billings from BellSouth electronically, which results in DeltaCom having even more time between the date it receives the bill and the payment due date.

Further, BellSouth notes that DeltaCom acknowledges that the Commission and the FCC had both considered all of BellSouth's billing practices during the course of BellSouth's Section 271 long-distance application and concluded that BellSouth's billing practices (including this one) were nondiscriminatory. BellSouth also observes that

DeltaCom acknowledges that the Commission has performance metrics, and associated penalties, in place that measure whether BellSouth is providing timely and accurate bills to DeltaCom. Consequently, BellSouth contends that it is reasonable for payment to be due before the next bill date.

Discussion of Issue 59

It is important to encourage the Parties to render accurate and timely bills and also to allow the Parties adequate time to review the bills for any inaccuracies. Therefore, the Panel recommends that the bill shall be due 30 days after the date the bill is transmitted by BellSouth. The record reflects that DeltaCom currently receives over 90 percent of its bills electronically. DeltaCom then has the opportunity to review the vast majority of its bills for errors from the same date the bill is sent out. If, on the other hand, the due date was calculated based on the billing date, as proposed by BellSouth, then BellSouth has less motivation to post the bills to DeltaCom as soon as possible.

Conclusion to Issue 59

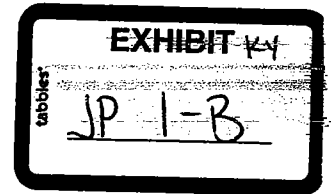
The Panel concludes that the payment due date should be 30 days from the date of receipt of the bill. Accordingly, the Panel recommends that the Commission require DeltaCom and BellSouth to properly amend the proposed language in the agreement to reflect this conclusion.

Joint Petitioners' Hearing Brief
SC P.S.C. Docket No. 2005-57-C
July 27th, 2006

ATTACHMENT 21



Network and Carrier Services-Customer Services



Customer: NEWSOUTH COMM INC
Date: 4/20/2005

NEWSOUTH COMM INC
V/O Senior Vice President
Of Network Planning & Provisioning
NewSouth Center
Two N. Main Street
Greenville, SC 29601

&

Vice President of Regulatory Affairs
NewSouth Center
Two N. Main Street
Greenville, SC 29601

OUR RECORDS INDICATE THAT AS OF 4/20/2005, WE HAVE NOT RECEIVED PAYMENT OF \$65.14 FOR NEWSOUTH COMM INC. IF PAYMENT OF THIS AMOUNT IS NOT RECEIVED BY 5/5/2005, REQUESTS FOR ADDITIONAL SERVICES WILL BE REFUSED. ALSO, PAYMENTS ARE EXPECTED FOR ANY CURRENT CHARGES THAT MAY BECOME PAST DUE BY 5/5/2005.

YOUR END USERS' SERVICE WILL BE INTERRUPTED UNLESS PAYMENT OF YOUR PAST DUE CHARGES IS RECEIVED BY 5/20/2005.

IF YOUR END USERS' SERVICE IS INTERRUPTED FOR NON-PAYMENT OF PAST DUE CHARGES, A RESTORAL FEE WILL APPLY FOR EACH END USER ACCOUNT UPON RESTORAL OF SERVICE. THIS MAY BE THE ONLY WRITTEN NOTIFICATION YOU RECEIVE. IN ADDITION, FURTHER NOTICE MAY NOT BE GIVEN BEFORE DISCONTINUING SERVICE IF A CHECK IS DISHONORED.

IF YOU HAVE PAID YOUR BILL SINCE THIS NOTICE WAS PREPARED PLEASE ACCEPT OUR THANKS AND REGARD THIS NOTICE.

CRIS/Oracle Aging Summary

4/20/2005

Customer	BAN	Current	31 - 60	61 - 90	91+	Disputed	Total Outstanding	Total Collectible
NEWSOUTH								
NEWSOUTH	205Q858735735	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	205Q859779779	\$19,090.20	\$0.00	\$0.00	\$0.00	\$3,500.26	\$0.00	(\$3,500.26)
NEWSOUTH	305Q858735735	\$28.23	(\$225.06)	\$0.00	\$0.00	\$0.00	(\$225.06)	(\$225.06)
NEWSOUTH	305Q859779779	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	561Q858735735	\$1,264.26	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	561Q859779779	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	904Q858735735	\$35,463.93	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	904Q859779779	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	706Q858735735	\$22,730.97	(\$1.57)	\$0.00	\$0.00	\$0.00	(\$1.57)	(\$1.57)
NEWSOUTH	706Q859779779	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	770Q858735735	\$14,585.32	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	770Q859779779	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	502Q835656656	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	502Q914836836	\$23,710.78	\$0.00	\$0.00	\$523.23	\$0.00	\$523.23	\$523.23
NEWSOUTH	318Q858735735	\$10,815.11	(\$14.65)	\$0.00	\$0.00	\$14.65	(\$14.65)	(\$29.30)
NEWSOUTH	318Q859779779	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	601Q858735735	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	601Q859779779	\$8,539.36	\$0.00	\$0.00	\$3.50	\$0.00	\$3.50	\$3.50
NEWSOUTH	704Q858735735	\$72,099.73	\$0.00	\$181.64	\$21,314.35	\$0.00	\$21,495.99	\$21,495.99
NEWSOUTH	704Q859779779	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	803Q858735735	\$87,976.42	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	803Q859779779	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	615Q858735735	\$59,587.07	\$0.00	\$0.00	\$17.50	\$0.00	\$17.50	\$17.50
NEWSOUTH	615Q859779779	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	205Q843678678	\$2,230.51	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	205Q853061061	\$3,382.03	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	205Q888401401	\$45.53	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	601Q869993993	\$2,329.58	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	561Q869993993	\$486.91	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	601Q843678678	\$4,615.33	\$59.91	\$0.00	\$0.00	\$0.00	\$59.91	\$59.91
NEWSOUTH	561Q851448148	\$65.90	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	205Q869993993	\$4,029.99	\$10.68	\$0.00	\$0.00	\$0.00	\$10.68	\$10.68
NEWSOUTH	904Q851448148	\$4,394.05	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	318Q947704704	\$215.80	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	502Q869993993	\$1,642.99	\$11.10	\$0.00	\$0.00	\$0.00	\$11.10	\$11.10
NEWSOUTH	502Q851448148	\$3,271.36	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	502Q876344344	\$123.42	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Customer	BAN	Current	31 - 60	61 - 90	91+	Disputed	Total Outstanding	Total Collectible
NEWSOUTH	904Q843678678	\$15,731.62	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	318Q869993993	\$5,125.73	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	305Q869993993	\$65.94	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	205Q947704704	\$303.13	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	318Q843678678	\$9,494.07	\$452.14	\$0.00	\$0.00	\$12.17	\$452.14	\$439.97
NEWSOUTH	904Q869993993	\$4,630.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	770Q869993993	\$5,156.98	\$30.37	\$0.00	\$0.00	\$0.00	\$30.37	\$30.37
NEWSOUTH	704Q869993993	\$5,199.41	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	615Q869993993	\$8,764.59	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	318Q851448148	\$7,353.45	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	704Q851448148	\$4,425.03	\$53.67	\$0.00	\$0.00	\$0.00	\$53.67	\$53.67
NEWSOUTH	706Q869993993	\$8,926.93	\$7.15	\$0.00	\$0.00	\$0.00	\$7.15	\$7.15
NEWSOUTH	843Q851448148	\$10,442.70	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	706Q851448148	\$3,071.40	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	843Q869993993	\$24,761.47	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	770Q851448148	\$4,299.20	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	601Q947704704	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	601Q853061061	\$658.40	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH	615Q851448148	\$9,128.18	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH		\$510,263.54	\$383.74	\$181.64	\$21,858.58	\$3,527.08	\$22,423.96	\$18,896.88
NEWSOUTH COMM INC								
NEWSOUTH COMM INC	205Q916347347	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH COMM INC	205Q989242242	\$848.30	\$0.00	\$0.00	\$19.53	\$10.43	\$19.53	\$9.10
NEWSOUTH COMM INC	305Q916347347	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH COMM INC	305Q989242242	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH COMM INC	561Q916347347	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH COMM INC	561Q989242242	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH COMM INC	904Q916347347	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH COMM INC	904Q989242242	\$794.15	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH COMM INC	318Q916347347	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH COMM INC	318Q989242242	\$823.68	\$0.00	\$0.00	\$46.30	\$0.00	\$46.30	\$46.30
NEWSOUTH COMM INC	601Q916347347	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NEWSOUTH COMM INC	601Q989242242	\$455.82	\$0.00	\$0.00	\$9.74	\$0.00	\$9.74	\$9.74
NEWSOUTH COMM INC		\$2,921.95	\$0.00	\$0.00	\$75.57	\$10.43	\$75.57	\$65.14

Joint Petitioners' Hearing Brief
SC P.S.C. Docket No. 2005-57-C
July 27th, 2006

ATTACHMENT 22

By and Between

BellSouth Telecommunications, Inc.

And

**ITC^DeltaCom Communications, Inc.
d/b/a ITC^DeltaCom d/b/a Grapevine**

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AGREEMENT

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom d/b/a Grapevine, hereinafter referred to as ("ITC^DeltaCom") an Alabama corporation, and shall be deemed effective on the Effective Date, as defined herein. This agreement may refer to either BellSouth or ITC^DeltaCom or both as a "Party" or "Parties."

WITNESSETH

WHEREAS, BellSouth is an incumbent local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, ITC^DeltaCom is a competitive local exchange telecommunications company ("CLEC") authorized to provide telecommunications services in the state of Georgia; and

WHEREAS, the Parties wish to interconnect their facilities, purchase unbundled elements and/or resale services, and exchange traffic pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 ("the Act").

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and ITC^DeltaCom agree as follows:

Definitions

Access Service Request or "ASR" means an industry standard form used by the Parties to add, establish, change or disconnect trunks for the purposes of interconnection.

Act means the Communications Act of 1934, 47 U.S.C. 151 et seq., as amended, including the Telecommunications Act of 1996, and as interpreted from time to time in the duly authorized rules and regulations of the FCC or the Commission/Board.

Advanced Intelligent Network or "AIN" is Telecommunications network architecture in which call processing, call routing and network management are provided by means of centralized databases.

Affiliate is an entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another entity. For purposes of this paragraph, the term "own" or "control" means to own an equity interest (or equivalent thereof) of more than 10 percent.

Attachment 7
Page 1

Attachment 7

Billing and Billing Accuracy Certification

CCCS 340 of 540

NVX 000046

CLEC in the state and does not include any parents or separate affiliates. Notice, for purposes of this Deposit Policy, is defined as written notification to the Chief Financial Officer, General Counsel, and Vice President of Line Cost Accounting of ITC/DeltaCom.

- 1.11.1 New Customers and existing Customers may satisfy the requirements of this section with a D&B credit rating of 5A1 or through the presentation of a payment guarantee executed by another existing customer of BellSouth and with terms acceptable to BellSouth where said guarantor has a credit rating equal to 5A1. Upon request, Customer shall complete the BellSouth credit profile and provide information, reasonably necessary, to BellSouth regarding creditworthiness.
- 1.11.2 With the exception of new Customers with a D&B credit rating equal to 5A1, BellSouth may secure the accounts of all new Customers as set forth in subsection 1.11.4. In addition, new Customers will be treated as such until twelve months from their first bill/invoice date, and will be treated as existing Customers thereafter.
- 1.11.3 If a Customer has filed for bankruptcy protection within twelve (12) months of the effective date of this Agreement, BellSouth may treat Customer, for purposes of establishing a security on its accounts as a new customer as set forth in subsection 1.11.7.
- 1.11.4 The security required by BellSouth shall take the form of cash, an Irrevocable Letter of Credit (BellSouth Form), Surety Bond (BellSouth Form), or, in BellSouth's sole discretion, some other form of security proposed by Customer. The amount of the security shall not exceed one month's estimated billing for services billed in advance and two months' billing for services billed in arrears and if provided in cash, interest on said cash security shall accrue and be paid in accordance with the terms in the Commission approved General Subscriber BellSouth tariff for the appropriate state.
- 1.11.5 Any such security shall in no way release Customer from the obligation to make complete and timely payments of its bill.
- 1.11.6 No security deposit shall be required of an existing Customer who has a good payment history and meets two (2) liquidity benchmarks sets forth below in Sections 1.11.6.2 and 1.11.6.3. BellSouth may secure, pursuant to Section 1.11.9, the accounts of existing Customers where an existing Customer does not have a good payment history as defined in Section 1.11.1.6.1. If an existing Customer has a good payment history but fails to meet the two (2) liquidity benchmarks defined in Sections 1.11.6.2 and 1.11.6.3, BellSouth may secure the Customer's accounts, pursuant to Section 1.11.9.

Joint Petitioners' Hearing Brief
SC P.S.C. Docket No. 2005-57-C
July 27th, 2006

ATTACHMENT 23

2005.02.17 09:43:49
Kansas Corporation Commission
/S/ Susan K. Duffy

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

FEB 16 2005

Susan K. Duffy Docket
Room

In the Matter of the Petition of the CLEC)
Coalition for Arbitration against)
Southwestern Bell Telephone, L.P. d/b/a)
SBC Kansas under Section 252(b) of the)
Telecommunications Act of 1996.)

Docket No. 05-BTKT-365-ARB

In the Matter of the Application of AT&T)
Communications of the Southwest, Inc.)
and TCG Kansas City, Inc. for Compulsory)
Arbitration of Unresolved Issues with SBC)
Kansas Pursuant to Section 252(b) of the)
Telecommunications Act of 1996.)

Docket No. 05-AT&T-366-ARB

In the Matter of the Request of the CLEC)
Joint Petitioners for Arbitration with South-)
western Bell Telephone L.P. d/b/a SBC)
Kansas for an interconnection Agreement)
that Complies with Section 251 and 271)
of the Federal Telecommunications Act)
of 1996.)

Docket No. 05-TPCT-369-ARB

In the Matter of the Petition of Navigator)
Telecommunications, LLC for Arbitration)
against Southwestern Bell Telephone, L.P.)
d/b/a SBC Kansas Pursuant to Section)
252(b)(1) of the Telecommunications Act)
of 1996.)

Docket No. 05-NVTT-370-ARB

Arbitrator's Determination of Issues

The above matter comes before Arbitrator Robert L. Lehr, appointed by The State Corporation Commission of the State of Kansas (Commission) for consideration and recommendation. Being duly advised in the premises and familiar with all matters of record, the Arbitrator finds and concludes as follows.

customers of SWBT in Kansas. The term "back-billed" is not programmed as a phrase code in the billing system. Back-billing, then, cannot be set out separately on CLEC bills and it would be expensive and time-consuming to make that change. However, SWBT will provide a spreadsheet detailing the back-billing upon request.⁴⁷

Determination.

43. Based upon the recommendations and testimony of the parties, the Arbitrator finds that parties are permitted a 12-month back-billing window. To the extent that SWBT can separately identify back charges on a bill, the Arbitrator finds that it should do so. In all other regards, the Arbitrator finds that the record evidence supports SWBT's position and the Arbitrator, therefore, adopts SWBT's proposed language.

General Terms and Conditions—deposit/escrow

CLEC Coalition GTC-8, 15(c); Joint Petitioners GTC-8(c), 9; Navigator GTC-3, 4

44. The CLEC Coalition accepts the notion that SWBT is entitled to request a deposit from a CLEC, but only under limited circumstances and at an amount that would not exceed two months of billings to the CLEC by SWBT. The CLEC Coalition believes that it should be the CLEC's choice to provide the deposit amount in cash or irrevocable letter of credit as SWBT is protected equally well with either assurance device. The CLEC Coalition is concerned about SWBT's ability to call in the deposit if, in "SWBT's reasonable judgment"⁴⁸, the CLEC's credit worthiness is impaired. The CLEC Coalition

⁴⁷ SWBT Quate Direct p. 26 line 16 - p. 28 line 2; Rebuttal p. 17 line 6 - p. 18 line 5.

⁴⁸ CLEC Coalition GTC DPL § 3.2.2 p. 19, SWBT language.

notes that SWBT did not quantify any losses that it might have suffered with the 180 CLECs that ceased conducting business since 2000 throughout SWBT's 13-state region.⁴⁹

45. With respect to SWBT's proposal to require CLECs to escrow an amount equal to the amount of a bill being disputed, the CLEC Coalition points to the poor quality of SWBT's bills. For instance, Birch Telecom lodged over 1,000 billing disputes in Kansas in 2004 totaling \$500,000. Birch noted that 80% of its disputes with SWBT-Kansas and other SBC ILECs are decided in its favor. Birch claims that CLECs generally do not have sufficient financial resources to fund SWBT's billing errors. The CLEC Coalition recommends that escrows not be required until SWBT improves its billing systems.⁵⁰

46. The Joint Petitioners propose a standard deposit of \$17,000 and do not believe that a single missed payment should trigger invocation of a deposit equal to three months of billing.⁵¹

47. The Joint Petitioners also oppose SWBT's ability to require the billing dispute amount to be escrowed. They propose that no escrow be required if the CLEC disputing a bill (a) does not have a proven history of late payments and has established a minimum of six months good credit history with SWBT or (b) if more that 50 percent of the billing disputes lodged by the CLEC during the most recent 12-month period are determined in the CLEC's favor.⁵²

⁴⁹ CLEC Coalition Joint Direct p. 28 line 16 - p. 30 line 9; Rebuttal p. 14 line 18 - p. 16 line 15.

⁵⁰ CELC Coalition Wallace Direct p. 10 line 16 - p. 11 line 25.

⁵¹ Joint Petitioners Schaub Direct p. 6 line 4 - p. 7 line 3.

⁵² Joint Petitioners GTC DPL § 8.7 p. 22.

48. Xspedius and SWBT appear to be in a billing dispute. Xspedius admits to owing SWBT \$172,000 in undisputed amounts under its interconnection agreement, but claims that SWBT owes Xspedius approximately \$1.9 million. Xspedius proposes that any time that SWBT owes Xspedius more than one month's worth of Xspedius billings, a deposit by Xspedius will not be required.⁵³

49. Navigator believes that SWBT's potential financial exposure for unpaid charges of a CLEC is one month's worth of billing. Navigator is concerned about SWBT's ability to invoke its deposit requirement upon a CLEC's failure to pay even the smallest of bills.⁵⁴ Navigator also objects to SWBT's proposed ability to require escrow of the disputed amount of a bill. Navigator claims that, since beginning business in 1997, it has filed numerous billing disputes over some aspect of SWBT's bills. Because the resolution of these disputes may take one to one and a half years, Navigator is concerned with the large of amount of cash that would be tied up if Navigator is forced to provide escrow.

50. SWBT's criterion for establishing satisfactory credit is 12 consecutive months of timely payments to SWBT.⁵⁵ However, during the hearings, SWBT revised its criterion to a CLEC's credit history with SBC as a whole, saying that "deposits should not be state-specific."⁵⁶ Ms. Quate continued in her direct testimony, that SWBT's proposed triggers for determining impaired creditworthiness were based on concrete, clearly defined and objective criteria such as investment grade credit ratings and failure to timely

⁵³ CLEC Coalition Joint Direct p. 54 line 2 - p. 55 line 26.

⁵⁴ Navigator LeDoux Direct p. 8 line 22 - p. 10 line 9.

⁵⁵ SWBT Quate Direct p. 47 lines 18 - 26.

⁵⁶ SWBT Quate Tr. Vol. 1 p. 148 lines 11 - 14.

pay a bill. SWBT reports that the Michigan Public Service Commission approved the exact same language proposed here in its arbitration proceedings between SBC Michigan and MCI.⁵⁷

51. SWBT claims that the escrow requirement in billing disputes is necessary because some CLECs, such as Delta Phones, Inc., have been known to "game the system" by challenging bills just to extend their time for payment. However, SWBT is willing to waive escrow for "customers with good credit histories and who have not filed a large number of disputes that were resolved in SWBT's favor" and where there has been a material billing error. Otherwise, SWBT expects the disputed amount to be escrowed by the CLEC prior to the bill due date.⁵⁸

Determination.

52. The Arbitrator finds for the CLECs with respect to deposits. SWBT's proposal that it be permitted to use its "reasonable judgment" to determine if a CLEC's creditworthiness has been impaired is entirely too vague and subjective to provide CLECs with proper notice of when they become credit-unworthy. Furthermore, imposition of a deposit upon a previously creditworthy CLEC due to failure to pay some unquantified level of bill may be so out of balance and so vague as to be unacceptable in any corner of any market. The Arbitrator also disagrees with SWBT that the claim of Xspedius is a red herring that should be determined elsewhere. The Arbitrator finds that Xspedius' testimony is on point. If its position is accurate, requiring a deposit of Xspedius would be extremely unfair.

⁵⁷ SWBT Quote Direct p. 47 lines 5-12.

⁵⁸ SWBT Post-Hearing Brief p. 41.

Joint Petitioners' Hearing Brief
SC P.S.C. Docket No. 2005-57-C
July 27th, 2006

ATTACHMENT 24

DOCKET # 2004-497
MASTER LIST OF ISSUES BETWEEN SBC AND CLEC COALITION
GT&C

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC OKLAHOMA Language	SBC OKLAHOMA Preliminary Position	Arbitrator's Recommendation
Does the Commission have the jurisdiction to arbitrate language which pertains to Section 271 and 272 of the Act and which was not voluntarily negotiated and does not address 251(b) or (c) obligation?	1	WHEREAS		CLEC Coalition position on remaining issues: SBC made commitments to the OCC and Oklahoma CLECs in order to obtain the OCC's support for its 271 application. Those commitments were embodied in the O2A and should not be eliminated unless SBC is willing to give up its 271 relief. The CLEC Coalition's language accurately reflects the representations and actions where SBC agreed to treat CLECs as valued wholesale customers, in response to	WHEREAS, pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the Act), the Parties wish to establish terms for the resale of SBC OKLAHOMA services and for the provision by SBC OKLAHOMA of Interconnection, Unbundled Network Elements, and Ancillary Functions as designated in the Attachments hereto.	The CLEC Coalition proposes language which purports to set forth SBC OKLAHOMA's obligations pursuant to Section 271 and 272 of the Telecommunications Act. Pursuant to the Fifth Circuit's recent opinion in <i>Coserve v. Southwestern Bell Tel. Co.</i> , 350 F.3d 482 (5 th Cir. 2003), this language is mandatory arbitration because it does not relate to SBC OKLAHOMA's 251(b) or (c) obligations and SBC	The Interconnection agreement should contain reference to § 251 terms and conditions as well as reference to the elements required to be provided to the CLEC in order to complete interconnection. Although it is clear that only mandated UNEs must be provided to CLECs by SBC, the Arbitrator finds that this affects the price for certain elements as opposed to the availability for purchase of some of the elements. The CLEC's language is adopted, after changing "Texas" to "Oklahoma."

Key: Bold represents language proposed by SBC and opposed by CLECs.

Bold and Underline language represents language proposed by CLEC and opposed by SBC.

DOCKET # 2004-497
MASTER LIST OF ISSUES BETWEEN SBC AND CLEC COALITION
GT&C

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC OKLAHOMA Language	SBC OKLAHOMA Preliminary Position	Arbitrator's Recommendation
			<p><u>3.10.</u></p> <p><u>3.5</u> If during the first six (6) months of operations, CLEC has been sent one delinquency notification letter by SBC OKLAHOMA, the deposit amount shall be re-evaluated based upon CLEC's actual billing totals and shall be increased if CLEC's actual billing average;</p> <p><u>3.5.1</u> for SBC OKLAHOMA for a two (2) month period exceeds the deposit amount held; or</p> <p><u>3.6</u> Throughout the Term, any time CLEC has been sent two (2) delinquency notification letters by SBC OKLAHOMA, the deposit amount shall be re-evaluated based upon CLEC's actual billing totals and shall be increased if CLEC's actual billing</p>	<p>imposition of what is nothing less than a penalty for attempting to enter into competition with SBC Oklahoma. Finally, the CLEC (and not SBC) should have the option of picking whether to satisfy any deposit requirement by using cash or a letter of credit. SBC is protected either way, so the option should be left to the CLEC.</p> <p>In the recent T2A proceeding, the Texas Commission agreed that giving SBC such unbridled discretion was bad policy. Consequently, the Texas PUC is</p>	<p>Cash Deposit shall constitute the grant of a security interest in the Cash Deposit pursuant to Article 9 of the Uniform Commercial Code in effect in any relevant jurisdiction.</p> <p><u>3.6</u> A Cash Deposit will accrue simple interest, however, SBC OKLAHOMA will not pay interest on a Letter of Credit.</p> <p><u>3.7</u> SBC OKLAHOMA may, but is not obligated to, draw on the Letter of Credit or the Cash Deposit, as applicable, upon the occurrence of any one of the following events:</p> <p><u>3.7.1</u> CLEC owes SBC OKLAHOMA</p>	<p>SBC OKLAHOMA believes that deposits should be assessed on an overall customer basis.</p> <p><u>3.9</u> SBC agrees that an irrevocable Bank Letter of Credit can satisfy its deposit requirements provided it meets the criteria specified in SBC's proposed assurance of payment language. Quate Direct pp. 40-45</p> <p>Quate Rebuttal pp. 21-26</p>	<p>calculate CLEC's monthly average.</p> <p><u>3.7.1</u> After calculating the amount equal to the average billing to CLEC for a two (2) month period in Oklahoma, SBC OKLAHOMA shall add the amount of any charges that would be applicable to transfer all of CLEC's then-existing End-Users of Resale Services to SBC OKLAHOMA in the event of CLEC's disconnection for non-payment of charges. The resulting sum is the amount of the deposit.</p> <p>[Xpedius only]</p> <p><u>3.7.1</u> In no event will Xpedius be subject to an assurance of payment to SBC OKLAHOMA that exceeds two months' protected average billing by SBC OKLAHOMA to Xpedius less the amount of billings by Xpedius to SBC OKLAHOMA. If SBC</p>

Key: Bold represents language proposed by SBC and opposed by CLECs.
 Bold and Underline language represents language proposed by CLEC and opposed by SBC.

DOCKET # 2004-497
MASTER LIST OF ISSUES BETWEEN SBC AND CLEC COALITION
GT&C

Issue Statement	Issue No.	Attachment and Sections	CLEC Language	CLEC Preliminary Position	SBC OKLAHOMA Language	SBC OKLAHOMA Preliminary Position	Arbitrator's Recommendation
			<p>average:</p> <p><u>3.6.1 for SBC OKLAHOMA for a two (2) month period exceeds the deposit amount held; or</u></p> <p><u>3.7 Whenever a deposit is re-evaluated as specified in Section 3.5 or Section 3.6, such deposit shall be calculated in an amount equal to the average billing to CLEC for a two (2) month period. The most recent three (3) months billing on all of CLEC's CBAs and BANS for Resale Services or Network Elements within that state shall be used to calculate CLEC's monthly average.</u></p> <p><u>3.7.1 After calculating the amount equal to the average billing to CLEC for a two (2) month period in Oklahoma, SBC OKLAHOMA shall add the amount of any charges that</u></p>	<p>requiring SBC to make decisions on deposits for established CLECs based solely on the CLEC's payment history. Similarly, in the KZA proceeding, the Arbitrator agreed that SBC's language is unreasonable, and adopted the CLEC Coalition's language on all sub-issues.</p> <p>Xspedius preliminary position: At any given time, SBC Oklahoma owes Xspedius significantly more in reciprocal compensation that Xspedius owes SBC under the ICA. SBC is therefore more</p>	<p>undisputed charges under this Agreement that are more than thirty (30) calendar days past due; or</p> <p><u>3.7.2 CLEC admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or</u></p>		<p>owes Xspedius more than \$500,000, then a deposit would not be required until such time as the outstanding balance is reduced below this amount.</p> <p><u>3.7.3 The expiration or termination of this Agreement.</u></p> <p><u>3.8. If SBC OKLAHOMA draws on the Letter of Credit or Cash Deposit, upon request by SBC OKLAHOMA, CLEC will provide a replacement or supplemental letter of credit or cash deposit conforming to the requirements of Section 3.3.</u></p> <p><u>3.9 Notwithstanding anything else set forth in this Agreement, if SBC OKLAHOMA makes a request for assurance of payment in accordance with the terms of this Section, then SBC OKLAHOMA shall have no obligation</u></p>

Key: Bold represents language proposed by SBC and opposed by CLECs.

Bold and Underline language represents language proposed by CLEC and opposed by SBC.

Joint Petitioners' Hearing Brief
SC P.S.C. Docket No. 2005-57-C
July 27th, 2006

ATTACHMENT 25

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT PETITION FOR ARBITRATION OF)	
NEWSOUTH COMMUNICATIONS CORP.,)	
NUVOX COMMUNICATIONS, INC., KMC)	
TELECOM V, INC., KMC TELECOM III LLC,)	
AND XSPEDIUS COMMUNICATIONS, LLC ON)	CASE NO.
BEHALF OF ITS OPERATING SUBSIDIARIES)	2004-00044
XSPEDIUS MANAGEMENT CO. SWITCHED)	
SERVICES, LLC, XSPEDIUS MANAGEMENT)	
CO. OF LEXINGTON, LLC, AND XSPEDIUS)	
MANAGEMENT CO. OF LOUISVILLE, LLC)	
OF AN INTERCONNECTION AGREEMENT)	
WITH BELL SOUTH TELECOMMUNICATIONS,)	
INC. PURSUANT TO SECTION 252(B) OF THE)	
COMMUNICATIONS ACT OF 1934, AS)	
AMENDED)	

O R D E R

NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III, LLC, and Xspedius Communications, LLC on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Lexington, LLC, and Xspedius Management Co. of Louisville, LLC (collectively, "Joint Petitioners") filed with the Commission a joint petition for arbitration seeking resolution of 107 issues arising between the Joint Petitioners and BellSouth Telecommunications, Inc. ("BellSouth"). BellSouth answered the petition.

The parties have agreed that they will continue operating under their current interconnection agreements until they are able to negotiate or arbitrate new agreements

undisputed past due amounts, if any, that BellSouth owes the CLEC. The Commission finds that this addition is reasonable and that it should be adopted.

ISSUE 103: SHOULD BELL SOUTH BE ENTITLED
TO TERMINATE SERVICE TO CLEC IF CLEC REFUSES
TO REMIT ANY DEPOSIT REQUIRED BY BELL SOUTH WITHIN
30 CALENDAR DAYS?

Joint Petitioners argue that BellSouth does not have a right to terminate services to a CLEC for the CLEC's failure to remit a deposit requested by BellSouth, except when the CLEC has agreed to the deposit or when the Commission has ordered the deposit. If one of these conditions is not met, then a dispute over a requested deposit should, according to the Joint Petitioners, be addressed through the dispute resolution provisions in the interconnection agreement. BellSouth counters that it should be able to terminate service to a CLEC if the CLEC has failed to pay a requested deposit within 30 calendar days. BellSouth seeks this right to terminate for failure to pay a deposit in order to protect its financial interests.

The Commission finds that BellSouth should not be permitted to terminate CLEC services when the CLEC has met all of its financial obligations to BellSouth with the exception of the demand for deposit. It is inappropriate for BellSouth to terminate service when a Joint Petitioner has paid all bills except the request for a deposit. When such disputes arise between BellSouth and a Joint Petitioner, the dispute resolution provisions should be invoked.

The Commission HEREBY ORDERS that:

1. BellSouth's motion to move Issues 26, 36, 37, 38, and 51 to the generic proceeding, Case No. 2004-00427, is denied.

2. The parties hereto shall file their interconnection agreements no later than 30 days from the date of this Order, incorporating the decisions reached herein.

Done at Frankfort, Kentucky, this 26th day of September, 2005.

By the Commission

ATTEST:



Executive Director

Case No. 2004-00044